

NTSB Order No.
EM-79

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D. C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.
on the 26th day of March 1980.

JOHN B. HAYES, Commandant, United States Coast Guard,

vs.

MICHAEL G. EDWARDS, Appellant.

Docket ME-76

OPINION AND ORDER

Appellant seeks review of the Commandant's decision affirming the revocation of his license (No. 481526) and merchant mariner's document (No. Z-266745403) for misconduct aboard the M/V MANHATTAN ISLAND, an inspected hopper dredge. He was serving as a third assistant engineer on the vessel,¹ which was then anchored in the Savannah River near Savannah, Georgia, awaiting repairs to its steering system.

Appellant had appealed to the Commandant (Appeal no. 2156) from an initial decision issued by the Administrative Law Judge John J. O'Malley, Jr., following a full evidentiary hearing² Throughout these proceedings, appellant has been represented by counsel.

The law judge found that on April 18, 1978, as charged, appellant used foul and abusive language to the master of the MANHATTAN ISLAND, calling him an obscene name (I.D. 12) in the presence of others on the bridge of the vessel; and thereafter assaulted and battered the master by choking him when they were alone in the master's cabin. In assessing sanction, the law judge concluded that appellant's actions formed a continuing pattern of "harrassment" against his superior officers which rendered him "a

¹Appellant's license was necessary for employment in this capacity on an inspected vessel of the United States. 41 U.S.C. 222.

²Copies of the decisions of the Commandant and the law judge are attached.

menace to the vessel" (I.D. 30). After entering his findings, the law judge considered appellant's prior disciplinary record (Tr. 410), which showed that he had voluntarily surrendered his license and document in 1974 in lieu of appearing at a Coast Guard hearing to answer a charge of conviction of a narcotic drug law violation. The law judge thereupon imposed the order of revocation.

In his brief on appeal, appellant contends that the burden of proof was not sustained, and the decision of the law judge is against the weight of the evidence. On sanction, he contends that the order will result in extreme hardship, and that at most a 1-year suspension is appropriate under Coast Guard regulations. Counsel for the Commandant has not filed a reply brief.

Upon consideration of appellant's brief and the entire record, we conclude that his misconduct was established by probative, reliable, and substantial evidence. In addition to our further findings herein, we adopt those of the law judge and the Commandant, on review, as our own. Moreover, we agree that the sanction is warranted.

It is undisputed that appellant subjected the master to verbal abuse on April 18, the date of his discharge from the MANHATTAN ISLAND. By his own admission (Tr. 302, 346), this occurred after he was denied permission to go ashore unless he took all of his gear, and to use the vessel's radiotelephone for a personal call. Appellant's sole argument on appeal is that personal calls were "quite common" via the ship's telephone. Our review of the record indicates that a policy of restricting them was in effect although not uniformly applied in practice. Nevertheless, it cannot be said that the master was exceeding his authority by enforcing such a policy in this instance. Even assuming that he acted arbitrarily, there was not sufficient provocation for the insubordination established here.

Appellant's testimony on the second charge was in direct conflict with that of the master as to whether he was the assailant or the victim of an unprovoked attack in the master's cabin. The master testified that while working at his desk he felt a pair of hands placed "very firmly" around his neck forcing his head down on the desk; that he looked over his left shoulder and saw that it was appellant; that he took a "fid"³ from the toolbox underneath his desk and struck appellant's head with it; and that appellant then "reared back" and ran from the room (Tr. 41, 61-64). In

³A tapered wooden tool of circular cross section used for splicing lines, approximately 30 inches long, rounded at one end, and pointed at the other (Tr. 64, 242).

appellant's version, he was struck without warning when he came into the master's room to get his discharge certificate and termination notice. He denied attacking the master with his hands in any manner (Tr. 317).

The master's testimony was corroborated by the witnesses arriving at the scene soon afterward who observed red marks or welts on both sides of his neck (Tr. 132, 374). Furthermore, based on this evidence as well as the demeanor of both principals on the witness stand, the law judge made a credibility finding in favor of the master.

We have also taken into account, as did the law judge, an altercation on the previous day in which appellant claims that he was attacked by the master. The chief engineer, who was a bystander, described it as a "small name - calling and shoving match" (Tr. 175). Subsequently, the record reflects a deliberate effort of the master to avoid all further contact with appellant, leaving the chief engineer to deal with him on matters relating to his discharge, pay, and transportation home. We agree with the law judge that there is no reason to believe the master would have suddenly bludgeoned the appellant simply because he had come for his discharge papers, "especially knowing that in a short while he would be off the vessel..." (I.D. 26).

Appellant further argues that he received a wound on the left center portion of his head, indicating that the master had a two-handed grip on the fid; and that the master, after following him into the passageway, returned to his cabin alone before displaying the marks on his neck to the other witnesses. The first assertion differs from appellant's own testimony that he was struck "right in the middle of the head (Tr. 315, 321). In any event, a wound anywhere near the middle of his head would not be incompatible with the master's testimony of forcing himself around so that he was almost facing the appellant, while swinging the fid with his right hand (Tr. 67-68). Accordingly, the first argument is not perceived as discrediting the master's testimony. The second argument was disposed of by the law judge, who did not believe that the master had "somehow wrung his own neck immediately after the incident to support his theory of self-defense" (I.D. 26). The testimony of the master, whose credibility the law judge accepted, and the marks observed on his neck shortly after the incident, establish that appellant was the aggressor; and that in delivering the blow to appellant's head with the fid, the master was acting in self-defense. We see no reason warranting either reversal or modification of the law judge's findings of fact.

Appellant's arguments for reduction of sanction are not well founded. He claims that these are his first offenses committed on

board any vessel; however, his conviction of a narcotic drug law violation, whether for an offense ashore or aboard ship, is cognizable for disciplinary purposes (C.D. 4-5). The Coast Guard regulations provide a scale of average orders "for the information and guidance of administrative law judges... and should not in any manner affect the fair and impartial adjudication of each case on its individual facts and merits".⁴ In this case, misconduct has been proved which demonstrates that appellant will resort to violence on slight provocation. Despite the economic consequences to appellant, it is necessary to remove him from the shipboard environment for the protection of other seamen.⁵

ACCORDINGLY, IT IS ORDERED THAT:

1. The instant appeal be and it hereby is denied; and
2. The order's of the law judge and the Commandant revoking appellant's license and document be and they are hereby affirmed.

KING, Chairman, DRIVER, Vice Chairman, McADAMS, GOLDMAN, and BURSLEY, Members of the Board, concurred in the above opinion and order.

⁴46 CFR 5.20-165.

⁵Commandant v. Smith, 2 N.T.S.B. 2627, 2629, Order EM-29, adopted April 25, 1973; Commandant v. Pollard, 2 N.T.S.B. 2663, 2665, Order EM-33, adopted March 20, 1974.